

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1046

Introduced by Assembly Member Firebaugh

February 20, 2003

~~An act to amend Sections 241, 243, and 245 of the Penal Code, relating to crimes. An act to amend Section 241.1 of the Penal Code, relating to assault.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1046, as amended, Firebaugh. Crimes: assault ~~and battery~~.

Under existing law, when an assault ~~or battery~~ is committed against ~~specified people, including peace officers, a custodial officer, and the person committing the offense knows or reasonably should know that the custodial officer is engaged in the performance of his or her duties,~~ it is punishable by a fine not exceeding \$2,000, ~~or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment in the state prison.~~ Existing law also requires that any person who commits assault with specified weapons against a peace officer or firefighter engaged in the performance of his or her duties when the person knows or reasonably should know that the victim is a peace officer or firefighter be punished as specified depending on the weapon.

This bill would include ~~eustody officers or eustody assistants, law enforcement technicians, sheriff's security officers, or security assistants engaged in the performance of his or her duties to the list of people to which these crimes apply.~~ This bill would also define these terms as custodial officers for purposes of this assault provision public

employees who are employed by a law enforcement agency to assist peace officers in maintaining custody of prisoners, and who perform tasks related to the operation of a local detention facility, while performing duties in distinctive clothing, as specified. Because this bill would ~~create a new crime~~ expand the scope of these assault provisions, extending existing criminal provisions, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 241 of the Penal Code is amended to~~
 2 *SECTION 1. Section 241.1 of the Penal Code is amended to*
 3 *read:*
 4 241.1. (a) When an assault is committed against the person
 5 of a custodial officer as defined in Section 831 or 831.5, *or as*
 6 *provided in subdivision (b),* and the person committing the offense
 7 knows or reasonably should know that ~~such~~ the victim is ~~such a~~
 8 ~~one of these custodial officer officers~~ engaged in the performance
 9 of his or her duties, the offense shall be punished by imprisonment
 10 in the county jail not exceeding one year or by imprisonment in the
 11 state prison.
 12 (b) *For purposes of this section, custodial officer shall include*
 13 *a public employee who is employed by a law enforcement agency*
 14 *of a city, county, or city and county to assist peace officers in*
 15 *maintaining custody of prisoners, and who performs tasks related*
 16 *to the operation of a local detention facility, as long as he or she*
 17 *is engaged in the performance of his or her duties and is wearing*
 18 *distinctive clothing that clearly identifies in writing the employing*
 19 *agency.*
 20 ~~read:~~

1 241. ~~(a) An assault is punishable by a fine not exceeding one~~
2 ~~thousand dollars (\$1,000), or by imprisonment in the county jail~~
3 ~~not exceeding six months, or by both the fine and imprisonment.~~

4 ~~(b) When an assault is committed against the person of a peace~~
5 ~~officer, firefighter, emergency medical technician, mobile~~
6 ~~intensive care paramedic, lifeguard, process server, traffic officer,~~
7 ~~custody officer or custody assistant, law enforcement technician,~~
8 ~~sheriff's security officer, or security assistant, or animal control~~
9 ~~officer engaged in the performance of his or her duties, or a~~
10 ~~physician or nurse engaged in rendering emergency medical care~~
11 ~~outside a hospital, clinic, or other health care facility, and the~~
12 ~~person committing the offense knows or reasonably should know~~
13 ~~that the victim is a peace officer, firefighter, emergency medical~~
14 ~~technician, mobile intensive care paramedic, lifeguard, process~~
15 ~~server, traffic officer, custody officer or custody assistant, law~~
16 ~~enforcement technician, sheriff's security officer, or security~~
17 ~~assistant, or animal control officer engaged in the performance of~~
18 ~~his or her duties, or a physician or nurse engaged in rendering~~
19 ~~emergency medical care, the assault is punishable by a fine not~~
20 ~~exceeding two thousand dollars (\$2,000), or by imprisonment in~~
21 ~~the county jail not exceeding one year, or by both the fine and~~
22 ~~imprisonment.~~

23 ~~(c) As used in this section, the following definitions apply:~~

24 ~~(1) Peace officer means any person defined in Chapter 4.5~~
25 ~~(commencing with Section 830) of Title 3 of Part 2.~~

26 ~~(2) "Emergency medical technician" means a person~~
27 ~~possessing a valid course completion certificate from a program~~
28 ~~approved by the State Department of Health Services for the~~
29 ~~medical training and education of ambulance personnel, and who~~
30 ~~meets the standards of Division 2.5 (commencing with Section~~
31 ~~1797) of the Health and Safety Code.~~

32 ~~(3) "Mobile intensive care paramedic" refers to those persons~~
33 ~~who meet the standards set forth in Division 2.5 (commencing~~
34 ~~with Section 1797) of the Health and Safety Code.~~

35 ~~(4) "Nurse" means a person who meets the standards of~~
36 ~~Division 2.5 (commencing with Section 1797) of the Health and~~
37 ~~Safety Code.~~

38 ~~(5) "Lifeguard" means a person who is:~~

39 ~~(A) Employed as a lifeguard by the state, a county, or a city, and~~
40 ~~is designated by local ordinance as a public officer who has a duty~~

1 and responsibility to enforce local ordinances and misdemeanors
2 through the issuance of citations.

3 (B) ~~Wearing distinctive clothing which includes written~~
4 ~~identification of the person's status as a lifeguard and which~~
5 ~~clearly identifies the employing organization.~~

6 (6) ~~"Process server" means any person who meets the~~
7 ~~standards or is expressly exempt from the standards set forth in~~
8 ~~Section 22350 of the Business and Professions Code.~~

9 (7) ~~"Traffic officer" means any person employed by a county~~
10 ~~or city to monitor and enforce state laws and local ordinances~~
11 ~~relating to parking and the operation of vehicles.~~

12 (8) ~~"Animal control officer" means any person employed by~~
13 ~~a county or city for purposes of enforcing animal control laws or~~
14 ~~regulations.~~

15 (9) ~~"Custody officer," "custody assistant," "law enforcement~~
16 ~~technician," "security officer," and "security assistant" mean~~
17 ~~any person employed by a sheriff's department engaged in the~~
18 ~~performance of his or her duties and wearing distinctive clothing,~~
19 ~~including, written identification of the persons status that clearly~~
20 ~~identifies the employing organization.~~

21 SEC. 2. ~~Section 243 of the Penal Code is amended to read:~~

22 243. (a) ~~A battery is punishable by a fine not exceeding two~~
23 ~~thousand dollars (\$2,000), or by imprisonment in a county jail not~~
24 ~~exceeding six months, or by both that fine and imprisonment.~~

25 (b) ~~When a battery is committed against the person of a peace~~
26 ~~officer, custodial officer, firefighter, emergency medical~~
27 ~~technician, lifeguard, process server, traffic officer, custody~~
28 ~~officer, custody assistant, law enforcement technician, sheriff's~~
29 ~~security officer, or security assistant, or animal control officer~~
30 ~~engaged in the performance of his or her duties, whether on or off~~
31 ~~duty, including when the peace officer is in a police uniform and~~
32 ~~is concurrently performing the duties required of him or her as a~~
33 ~~peace officer while also employed in a private capacity as a~~
34 ~~part-time or casual private security guard or patrolman, or a~~
35 ~~nonsworn employee of a probation department engaged in the~~
36 ~~performance of his or her duties, whether on or off duty, or a~~
37 ~~physician or nurse engaged in rendering emergency medical care~~
38 ~~outside a hospital, clinic, or other health care facility, and the~~
39 ~~person committing the offense knows or reasonably should know~~
40 ~~that the victim is a peace officer, custodial officer, firefighter,~~

1 ~~emergency medical technician, lifeguard, process server, traffic~~
2 ~~officer, custody officer, custody assistant, law enforcement~~
3 ~~technician, sheriff's security officer, or security assistant, or~~
4 ~~animal control officer engaged in the performance of his or her~~
5 ~~duties, nonsworn employee of a probation department, or a~~
6 ~~physician or nurse engaged in rendering emergency medical care,~~
7 ~~the battery is punishable by a fine not exceeding two thousand~~
8 ~~dollars (\$2,000), or by imprisonment in a county jail not exceeding~~
9 ~~one year, or by both that fine and imprisonment.~~

10 ~~(c) (1) When a battery is committed against a custodial officer,~~
11 ~~firefighter, emergency medical technician, lifeguard, process~~
12 ~~server, traffic officer, or animal control officer engaged in the~~
13 ~~performance of his or her duties, whether on or off duty, or a~~
14 ~~nonsworn employee of a probation department engaged in the~~
15 ~~performance of his or her duties, whether on or off duty, or a~~
16 ~~physician or nurse engaged in rendering emergency medical care~~
17 ~~outside a hospital, clinic, or other health care facility, and the~~
18 ~~person committing the offense knows or reasonably should know~~
19 ~~that the victim is a nonsworn employee of a probation department,~~
20 ~~custodial officer, firefighter, emergency medical technician,~~
21 ~~lifeguard, process server, traffic officer, or animal control officer~~
22 ~~engaged in the performance of his or her duties, or a physician or~~
23 ~~nurse engaged in rendering emergency medical care, and an injury~~
24 ~~is inflicted on that victim, the battery is punishable by a fine of not~~
25 ~~more than two thousand dollars (\$2,000), by imprisonment in a~~
26 ~~county jail not exceeding one year, or by both that fine and~~
27 ~~imprisonment, or by imprisonment in the state prison for 16~~
28 ~~months, or two or three years.~~

29 ~~(2) When the battery specified in paragraph (1) is committed~~
30 ~~against a peace officer engaged in the performance of his or her~~
31 ~~duties, whether on or off duty, including when the peace officer is~~
32 ~~in a police uniform and is concurrently performing the duties~~
33 ~~required of him or her as a peace officer while also employed in~~
34 ~~a private capacity as a part-time or casual private security guard or~~
35 ~~patrolman and the person committing the offense knows or~~
36 ~~reasonably should know that the victim is a peace officer engaged~~
37 ~~in the performance of his or her duties, the battery is punishable~~
38 ~~by a fine of not more than ten thousand dollars (\$10,000), or by~~
39 ~~imprisonment in a county jail not exceeding one year or in the state~~

1 prison for 16 months, or two or three years, or by both that fine and
2 imprisonment.

3 (d) When a battery is committed against any person and serious
4 bodily injury is inflicted on the person, the battery is punishable
5 by imprisonment in a county jail not exceeding one year or
6 imprisonment in the state prison for two, three, or four years.

7 (e) (1) When a battery is committed against a spouse, a person
8 with whom the defendant is cohabiting, a person who is the parent
9 of the defendant's child, former spouse, fiancé, or fiancée, or a
10 person with whom the defendant currently has, or has previously
11 had, a dating or engagement relationship, the battery is punishable
12 by a fine not exceeding two thousand dollars (\$2,000), or by
13 imprisonment in a county jail for a period of not more than one
14 year, or by both that fine and imprisonment. If probation is
15 granted, or the execution or imposition of the sentence is
16 suspended, it shall be a condition thereof that the defendant
17 participate in, for no less than one year, and successfully complete,
18 a batterer's treatment program, as defined in Section 1203.097, or
19 if none is available, another appropriate counseling program
20 designated by the court. However, this provision shall not be
21 construed as requiring a city, a county, or a city and county to
22 provide a new program or higher level of service as contemplated
23 by Section 6 of Article XIII B of the California Constitution.

24 (2) Upon conviction of a violation of this subdivision, if
25 probation is granted, the conditions of probation may include, in
26 lieu of a fine, one or both of the following requirements:

27 (A) That the defendant make payments to a battered women's
28 shelter, up to a maximum of five thousand dollars (\$5,000).

29 (B) That the defendant reimburse the victim for reasonable
30 costs of counseling and other reasonable expenses that the court
31 finds are the direct result of the defendant's offense.

32 For any order to pay a fine, make payments to a battered
33 women's shelter, or pay restitution as a condition of probation
34 under this subdivision, the court shall make a determination of the
35 defendant's ability to pay. In no event shall any order to make
36 payments to a battered women's shelter be made if it would impair
37 the ability of the defendant to pay direct restitution to the victim
38 or court-ordered child support. Where the injury to a married
39 person is caused in whole or in part by the criminal acts of his or
40 her spouse in violation of this section, the community property

1 may not be used to discharge the liability of the offending spouse
2 for restitution to the injured spouse, required by Section 1203.04,
3 as operative on or before August 2, 1995, or Section 1202.4, or to
4 a shelter for costs with regard to the injured spouse and
5 dependents, required by this section, until all separate property of
6 the offending spouse is exhausted.

7 (3) ~~Upon conviction of a violation of this subdivision, if~~
8 ~~probation is granted or the execution or imposition of the sentence~~
9 ~~is suspended and the person has been previously convicted of a~~
10 ~~violation of this subdivision and sentenced under paragraph (1),~~
11 ~~the person shall be imprisoned for not less than 48 hours in addition~~
12 ~~to the conditions in paragraph (1). However, the court, upon a~~
13 ~~showing of good cause, may elect not to impose the mandatory~~
14 ~~minimum imprisonment as required by this subdivision and may,~~
15 ~~under these circumstances, grant probation or order the suspension~~
16 ~~of the execution or imposition of the sentence.~~

17 (4) ~~The Legislature finds and declares that these specified~~
18 ~~crimes merit special consideration when imposing a sentence so as~~
19 ~~to display society's condemnation for these crimes of violence~~
20 ~~upon victims with whom a close relationship has been formed.~~

21 (f) ~~As used in this section:~~

22 (1) ~~“Peace officer” means any person defined in Chapter 4.5~~
23 ~~(commencing with Section 830) of Title 3 of Part 2.~~

24 (2) ~~“Emergency medical technician” means a person who is~~
25 ~~either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a~~
26 ~~valid certificate or license in accordance with the standards of~~
27 ~~Division 2.5 (commencing with Section 1797) of the Health and~~
28 ~~Safety Code.~~

29 (3) ~~“Nurse” means a person who meets the standards of~~
30 ~~Division 2.5 (commencing with Section 1797) of the Health and~~
31 ~~Safety Code.~~

32 (4) ~~“Serious bodily injury” means a serious impairment of~~
33 ~~physical condition, including, but not limited to, the following:~~
34 ~~loss of consciousness; concussion; bone fracture; protracted loss~~
35 ~~or impairment of function of any bodily member or organ; a~~
36 ~~wound requiring extensive suturing; and serious disfigurement.~~

37 (5) ~~“Injury” means any physical injury which requires~~
38 ~~professional medical treatment.~~

39 (6) ~~“Custodial officer” means any person who has the~~
40 ~~responsibilities and duties described in Section 831 and who is~~

1 employed by a law enforcement agency of any city or county or
2 who performs those duties as a volunteer.

3 (7) “Lifeguard” means a person defined in paragraph (5) of
4 subdivision (c) of Section 241.

5 (8) “Traffic officer” means any person employed by a city,
6 county, or city and county to monitor and enforce state laws and
7 local ordinances relating to parking and the operation of vehicles.

8 (9) “Animal control officer” means any person employed by
9 a city, county, or city and county for purposes of enforcing animal
10 control laws or regulations.

11 (10) “Dating relationship” means frequent, intimate
12 associations primarily characterized by the expectation of
13 affectional or sexual involvement independent of financial
14 considerations.

15 (11) “Custody officer,” “custody assistant,” “law
16 enforcement technician,” “security officer,” and “security
17 assistant” mean any person employed by a sheriff’s department
18 engaged in the performance of his or her duties and wearing
19 distinctive clothing, including, written identification of the
20 persons status that clearly identifies the employing organization.

21 (g) It is the intent of the Legislature by amendments to this
22 section at the 1981–82 and 1983–84 Regular Sessions to abrogate
23 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and
24 *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior
25 judicial interpretations of this section as they relate to criminal
26 sanctions for battery on peace officers who are employed, on a
27 part-time or casual basis, while wearing a police uniform as private
28 security guards or patrolmen and to allow the exercise of peace
29 officer powers concurrently with that employment.

30 SEC. 3. Section 245 of the Penal Code is amended to read:

31 245. (a) (1) Any person who commits an assault upon the
32 person of another with a deadly weapon or instrument other than
33 a firearm or by any means of force likely to produce great bodily
34 injury shall be punished by imprisonment in the state prison for
35 two, three, or four years, or in a county jail for not exceeding one
36 year, or by a fine not exceeding ten thousand dollars (\$10,000), or
37 by both the fine and imprisonment.

38 (2) Any person who commits an assault upon the person of
39 another with a firearm shall be punished by imprisonment in the
40 state prison for two, three, or four years, or in a county jail for not

1 less than six months and not exceeding one year, or by both a fine
2 not exceeding ten thousand dollars (\$10,000) and imprisonment.

3 (3) Any person who commits an assault upon the person of
4 another with a machinegun, as defined in Section 12200, or an
5 assault weapon, as defined in Section 12276 or 12276.1, shall be
6 punished by imprisonment in the state prison for 4, 8, or 12 years.

7 (b) Any person who commits an assault upon the person of
8 another with a semiautomatic firearm shall be punished by
9 imprisonment in the state prison for three, six, or nine years.

10 (c) Any person who commits an assault with a deadly weapon
11 or instrument, other than a firearm, or by any means likely to
12 produce great bodily injury upon the person of a peace officer,
13 firefighter, custody officer, custody assistant, law enforcement
14 technician, sheriff's security officer, or security assistant, and who
15 knows or reasonably should know that the victim is a peace officer,
16 firefighter, custody officer, custody assistant, law enforcement
17 technician, sheriff's security officer, or security assistant engaged
18 in the performance of his or her duties, when the peace officer,
19 firefighter, custody officer, custody assistant, law enforcement
20 technician, sheriff's security officer, or security assistant is
21 engaged in the performance of his or her duties, shall be punished
22 by imprisonment in the state prison for three, four, or five years.

23 (d) (1) Any person who commits an assault with a firearm
24 upon the person of a peace officer, firefighter, custody officer,
25 custody assistant, law enforcement technician, sheriff's security
26 officer, or security assistant and who knows or reasonably should
27 know that the victim is a peace officer, firefighter, custody officer,
28 custody assistant, law enforcement technician, sheriff's security
29 officer, or security assistant engaged in the performance of his or
30 her duties, when the peace officer, firefighter, custody officer,
31 custody assistant, law enforcement technician, sheriff's security
32 officer, or security assistant is engaged in the performance of his
33 or her duties, shall be punished by imprisonment in the state prison
34 for four, six, or eight years.

35 (2) Any person who commits an assault upon the person of a
36 peace officer, firefighter, custody officer, custody assistant, law
37 enforcement technician, sheriff's security officer, or security
38 assistant with a semiautomatic firearm and who knows or
39 reasonably should know that the victim is a peace officer,
40 firefighter, custody officer, custody assistant, law enforcement

1 technician, sheriff's security officer, or security assistant engaged
2 in the performance of his or her duties, when the peace officer,
3 firefighter, custody officer, custody assistant, law enforcement
4 technician, sheriff's security officer, or security assistant is
5 engaged in the performance of his or her duties, shall be punished
6 by imprisonment in the state prison for five, seven, or nine years.

7 (3) Any person who commits an assault with a machinegun, as
8 defined in Section 12200, or an assault weapon, as defined in
9 Section 12276 or 12276.1, upon the person of a peace officer,
10 firefighter, custody officer, custody assistant, law enforcement
11 technician, sheriff's security officer, or security assistant, and who
12 knows or reasonably should know that the victim is a peace officer,
13 firefighter, custody officer, custody assistant, law enforcement
14 technician, sheriff's security officer, or security assistant engaged
15 in the performance of his or her duties, shall be punished by
16 imprisonment in the state prison for 6, 9, or 12 years.

17 (e) When a person is convicted of a violation of this section in
18 a case involving use of a deadly weapon or instrument or firearm,
19 and the weapon or instrument or firearm is owned by that person,
20 the court shall order that the weapon or instrument or firearm be
21 deemed a nuisance, and it shall be confiscated and disposed of in
22 the manner provided by Section 12028.

23 (f) As used in this section, "peace officer" refers to any person
24 designated as a peace officer in Chapter 4.5 (commencing with
25 Section 830) of Title 3 of Part 2.

26 ~~SEC. 4.~~

27 *SEC. 2.* No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.